

FIRST REGULAR SESSION

# SENATE BILL NO. 475

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time February 8, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2066S.011

## AN ACT

To amend chapter 490, RSMo, by adding thereto one new section relating to the reliability of expert witness testimony.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 490, RSMo, is amended by adding thereto one new section, to be known as section 490.066, to read as follows:

**490.066. 1. This act may be known and cited as the "Reliability in Expert Testimony Standards Act".**

**2. If a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:**

**(1) Rationally based on the perception of the witness;**

**(2) Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and**

**(3) Not based on scientific, technical, or other specialized knowledge within the scope of subsection 3 of this section.**

**3. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:**

**(1) The testimony is based upon sufficient facts or data;**

**(2) The testimony is the product of reliable principles and methods; and**

**(3) The witness has applied the principles and methods reliably to the facts of the case.**

**4. The facts or data in the particular case upon which an expert**

22 bases an opinion or inference may be those perceived by or made  
23 known to the expert at or before the hearing. If of a type reasonably  
24 relied upon by experts in the particular field in forming opinions or  
25 inferences upon the subject, the facts or data need not be admissible in  
26 evidence in order for the opinion or inference to be admitted. Facts or  
27 data that are otherwise inadmissible shall not be disclosed to the jury  
28 by the proponent of the opinion or inference unless the court  
29 determines that their probative value in assisting the jury to evaluate  
30 the expert's testimony substantially outweighs their prejudicial effect.

31 5. A witness qualified as an expert by knowledge, skill,  
32 experience, training, or education may only offer expert testimony with  
33 respect to a particular field in which the expert is qualified. An expert  
34 witness may receive a reasonable and customary fee for the rendering  
35 of professional services, provided that the testimony of an expert  
36 witness shall not be admitted if any such compensation is contingent  
37 on the outcome of any claim or case with respect to which the  
38 testimony is being offered.

39 6. If the witness is testifying as an expert, then upon motion of  
40 a party, the court shall hold a pre-trial hearing to determine whether  
41 the witness qualifies as an expert and whether the expert's testimony  
42 satisfies the requirements of subsections 3 to 5 of this section. The  
43 court shall allow sufficient time for a hearing and shall rule on the  
44 qualifications of the witness to testify as an expert and whether or not  
45 the testimony satisfies the requirements of subsections 3 to 5 of this  
46 section. Such hearing and ruling shall be completed no later than the  
47 final pretrial hearing. The trial court's ruling shall set forth the  
48 findings of fact and conclusions of law upon which the order to admit  
49 or exclude expert evidence is based.

50 7. (1) Whether or not any party elects to request a pretrial  
51 hearing as described in subsection 6 of this section, all parties shall  
52 disclose to other parties the identity of any person who may be used at  
53 trial to present expert evidence.

54 (2) Except as otherwise stipulated or directed by the court, this  
55 disclosure shall, with respect to a witness who is retained or specially  
56 employed to provide expert testimony in the case or whose duties as an  
57 employee of the party regularly involve giving expert testimony, be  
58 accompanied by a written report prepared and signed by the

59 witness. The report shall contain a complete statement of all opinions  
60 to be expressed and the basis and reasons therefor; the data or other  
61 information considered by the witness in forming the opinions; any  
62 exhibits to be used as a summary of or support for the opinions, the  
63 qualifications of the witness, including a list of all publications  
64 authored by the witness within the preceding ten years; the  
65 compensation to be paid for the study and testimony; and a listing of  
66 any other cases in which the witness has testified as an expert at trial  
67 or by deposition within the preceding four years.

68 (3) These disclosures shall be made at the times and in the  
69 sequence directed by the court. In the absence of other directions from  
70 the court or stipulation by the parties, the disclosures shall be made at  
71 least ninety days before the trial or the date the case is to be ready for  
72 trial or, if the evidence is intended solely to contradict or rebut  
73 evidence on the same subject matter identified by another party under  
74 subdivision (2) of this subsection, within thirty days after the  
75 disclosure made by the other party.

76 (4) A party may depose any person who has been identified as an  
77 expert whose opinions may be presented at trial. If a report from the  
78 expert is required under subdivision (2) of this subsection, the  
79 deposition shall not be conducted until after the report is provided.

80 8. In interpreting and applying this section, the courts of this  
81 state shall follow the opinions of the Supreme Court of the United  
82 States in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579  
83 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), *Kumho Tire*  
84 *Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999), *Weisgram v. Marley*, 528 U.S.  
85 440 (2000), and their progeny; moreover, the courts of this state may  
86 draw from other precedents binding in the federal courts of this state  
87 applying the standards announced by the Supreme Court of the United  
88 States in the aforementioned cases.

89 9. Interlocutory appeal of a ruling on the admissibility of expert  
90 evidence shall be available at the discretion of the appellate court. In  
91 deciding whether to grant the interlocutory appeal, the court shall  
92 consider whether:

93 (1) The ruling involved any challenge to the constitutionality of  
94 this section;

95 (2) The ruling will help prove or disprove criminal liability; or

96           **(3) The ruling will help establish civil liability at or above**  
97 **seventy-five thousand dollars, where the testimony could be outcome-**  
98 **determinative for establishing liability or determining**  
99 **damages. Neither a party's failure to seek interlocutory appeal nor an**  
100 **appellate court's decision to deny a motion for interlocutory appeal**  
101 **shall waive a party's right to appeal a ruling on the admissibility of**  
102 **expert evidence after an entry of judgment in the case.**

103           **10. As the proper construction of the expert evidence**  
104 **admissibility framework prescribed by this section is a question of law,**  
105 **the courts of appeals shall apply a de novo standard of review in**  
106 **determining whether the trial court fully applied the proper legal**  
107 **standard in considering the admissibility of expert evidence. As the**  
108 **application of this section to determine the admissibility of expert**  
109 **testimony is a question of fact, the courts of appeals shall apply an**  
110 **abuse of discretion standard in determining whether the trial court**  
111 **properly admitted or excluded particular expert evidence.**

112           **11. The provisions of this section are severable. If any portion**  
113 **of this section is declared unconstitutional or the application of any**  
114 **part of this section to any person or circumstance is held invalid, the**  
115 **remaining portions of this section and their applicability to any person**  
116 **or circumstance shall remain valid and enforceable.**

117           **12. This section shall apply to all actions commenced on or after**  
118 **August 28, 2007, and to all pending actions in which the trial has not**  
119 **been scheduled or in which trial has been scheduled in excess of ninety**  
120 **days after August 28, 2007.**

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